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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA

ANGELICA MIRANDA, on behalf of herself
and all others similarly situated,

Plaintiff,

v.

O'REILLY AUTOMOTIVE STORES, INC.,
D/B/A O'REILLY AUTO ENTERPRISES,
LLC, and CSK AUTO, INC, a foreign
corporation; and O'REILLY AUTO
ENTERPRISES, LLC, a foreign limited
liability company; and CSK AUTO, INC, a
foreign corporation, and DOES 1-20,
inclusive

Defendants.

Case No.

**COLLECTIVE AND CLASS ACTION
COMPLAINT**

- 1) Failure to Pay Wages for All Hours
Worked in Violation of 29 U.S.C. § 201,
et seq.;
- 2) Failure to Pay Overtime in Violation of
29 U.S.C. § 207;
- 3) Failure to Compensate for All Hours
Worked in Violation of NRS 608.140
and 608.016;
- 4) Failure to Pay Overtime in Violation of
NRS 608.140 and 608.018; and
- 5) Failure to Timely Pay All Wages Due
and Owing in Violation of NRS 608.140
and 608.020-050.

COMES NOW Plaintiff ANGELICA MIRANDA, on behalf of herself and all others similarly situated, and alleges the following:

1. This case is brought both as a class action and collective action. The class action is brought pursuant to Federal Rule of Civil Procedure Rule 23. The collective action is brought pursuant to 29 U.C.S. § 216 (b) of the Fair Labor Standards Act ("FLSA") which states: "An action to recover the liability prescribed in either of the preceding sentences may be maintained against any employer (including a public agency) in any Federal or State court of competent jurisdiction by any one or more employees for and on behalf of himself or themselves and other employees similarly situated." As alleged in detail herein, Plaintiff alleges that Defendants uniformly misclassified their "Store Managers" who earned a salary of less than \$455 per week as exempt from overtime under both the FLSA and Nevada Law. This action is brought to recover unpaid wages, unpaid overtime, liquidated damages, penalties, costs of suit and attorney's fees on behalf of the following:

A. The FLSA Collective Action Group:

All persons who, at any time during the three years prior to the filing of this action through judgment, are or were employed by Defendants at one of their auto supply stores throughout the United States, excluding the State of California, as salaried "Store Managers" who earned a salary of less than \$455 per week.

B. The Nevada FRCP Rule 23 Class:

All persons who, at any time during the three years prior to the filing of this action through judgment, are or were employed by Defendants at one of their auto supply stores located in the State of Nevada as salaried "Store Managers" who earned a salary of less than \$455 per week.

I.

JURISDICTION AND VENUE

2. This Court has original jurisdiction over the federal claims alleged herein pursuant to the Fair Labor Standards Act ("FLSA"), 29 U.S.C. § 216(b), federal question jurisdiction over

1 this action pursuant to 28 U.S.C. § 1331, and supplemental jurisdiction over the state law claims
2 alleged herein pursuant to 28 U.S.C. § 1367. This Court has jurisdiction over the state law claims
3 alleged herein pursuant to Nevada Revised Statute ("NRS") sections 608.140, 608.016, 608.040,
4 608.050, and the Nevada Constitution.

5
6 3. Venue is proper in this Court because one or more of the named Defendants herein
7 owns and operates numerous auto parts stores in the greater Las Vegas area and throughout the
8 State of Nevada, the named Plaintiff was employed by Defendants at one of their auto part stores
9 located in Clark County, Nevada, and many of the acts complained of herein occurred in Clark
10 County, Nevada.

11 II.

12 PARTIES

13
14 4. Plaintiff ANGELICA MIRANDA ("Plaintiff" or "MIRANDA") is a natural person
15 who is and was a resident of Clark County, Nevada and who, within the last three years, was
16 employed by Defendants as a salaried exempt "Store Manager" at one of the many auto parts stores
17 owned and operated by Defendants in Clark County, Nevada. During her employment with
18 Defendants as a salaried exempt "Store Manager," Plaintiff was paid a weekly salary of \$369.23.
19 Additionally, Plaintiff was eligible to receive a commission. During her employment with
20 Defendants, Defendants suffered and permitted Plaintiff, and all others similarly situated, to work
21 in excess of forty (40) hours per week without receiving overtime pay as required by the FLSA and
22 Nevada law. Pursuant to Defendants' uniform operating policies and procedures, Plaintiff, and all
23 others similarly situated, were expected and required to work at least five (5) ten (10) hour shifts
24 per week for a minimum fifty (50) hours per week. Despite the fact that Defendants suffered and
25 permitted Plaintiff, and all others similarly situated, to work in excess of forty (40) hours per week,
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1 Defendants failed to pay either regular wages or overtime wages to Plaintiff and all others similarly
2 situated for all hours worked in excess of forty (40) hours a week.

3 5. Defendant O'REILLY AUTOMOTIVE STORES, INC., is a Missouri corporation.
4 Defendant O'REILLY AUTOMOTIVE STORES, INC., owns and operates a nationwide chain of
5 automotive supply stores. During the three months ending on March 31, 2014, Defendant
6 O'REILLY AUTOMOTIVE STORES, INC., owned and operated 4,216 stores in 42 states. Of the
7 4,216 stores owned and operated by O'REILLY AUTOMOTIVE STORES, INC, there are
8 approximately 50 stores in the State of Nevada. In 2008, Defendant O'REILLY AUTOMOTIVE
9 STORES, INC., purchased Defendant CSK AUTO, INC. Defendant O'REILLY AUTOMOTIVE
10 STORES, INC., does business in Nevada and across the country as, both, CSK AUTO, INC., and
11 O'REILLY AUTO ENTERPRISES, LLC.
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13 6. Defendant O'REILLY AUTO ENTERPRISES, LLC, is a Missouri limited liability
14 company and is a wholly owned subsidiary and D/B/A of Defendant O'REILLY AUTOMOTIVE
15 STORES, INC.
16

17 7. Defendant CSK AUTO, INC., is an Arizona corporation and is a wholly owned
18 subsidiary and D/B/A of Defendant O'REILLY AUTOMOTIVE STORES, INC.
19

20 8. Defendants, and each of them, are the employers of Plaintiff and all others similarly
21 situated under the provisions of Nevada Revised Statutes Chapter 608 and are engaged in
22 commerce for the purposes of the Fair Labor Standards Act, 29 U.S.C. § 201 *et seq.* At all times
23 material to this action Defendants have been an "employer" of Plaintiff, and all others similarly
24 situated, as defined by § 203(d) of the FLSA. Defendants each and together constitute the
25 employer and/or joint employer of Plaintiff and all others similarly situated.
26

27 9. Defendant O'REILLY AUTOMOTIVE STORES, INC., D/B/A O'REILLY AUTO
28 ENTERPRISES, LLC, and CSK AUTO, INC., and Defendant O'REILLY AUTO ENTERPRISES,

1 LLC, and Defendant CSK AUTO, INC., shall hereinafter collectively be referred to as
2 “Defendants” or “O’REILLY.”

3 10. The identity of DOES 1-20 is unknown at this time and this Complaint will be
4 amended at such time as when the identities are known to Plaintiff. Plaintiff is informed and
5 believes the each of the Defendants sued herein as DOE is responsible in some manner for the acts,
6 omissions, or representations alleged herein and any reference to “Defendant,” “Defendants,” or
7 “O’REILLY” shall mean “Defendants and each of them.”
8

9 **III.**

10 **FACTUAL ALLEGATIONS**

11 11. At all times relevant herein, Defendants owned and operated a nationwide chain of
12 automotive supply stores under the name of CSK AUTO and/or O’Reilly Auto Parts. Each of
13 Defendants’ automotive supply stores is/was staffed with a salaried exempt “Store Manager” and
14 several other hourly paid non-exempt employees. Plaintiff, and all other salaried “Store Managers”
15 employed by Defendants were paid a set salary irrespective of the number of hours that they
16 actually worked and were also eligible for a commission.
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18 12. Plaintiff is a former employee of the Defendants. From approximately January
19 2013 until April 15, 2014, Plaintiff was employed by Defendants as a salaried exempt Store
20 Manager at the O’Reilly Auto Parts store located at 1250 South Lamb Blvd. in Las Vegas, Nevada.
21 Pursuant to Defendants’ uniform operating policies and procedures, Defendants suffered,
22 permitted, required and expected Plaintiff to work a minimum of five (5) ten (10) hour shifts per
23 week for a minimum of fifty (50) hours per week. During her employment with Defendants as a
24 salaried “Store Manager” Plaintiff was paid a set salary of \$369.23 per week, irrespective of the
25 number of hours that she actually worked. In addition to her weekly salary, Plaintiff was also
26 eligible to earn commissions. Despite the fact that Plaintiff worked more than forty (40) hours per
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1 week, Defendants uniformly failed to pay Plaintiff either straight time wages or overtime wages
2 equivalent to one and one half times her hourly rate of pay, or the applicable minimum wage rate,
3 for any hours worked in excess of forty (40) hours per week.

4 13. At all times relevant hereto, Defendants suffered, permitted, expected and required
5 all of their salaried "Store Managers" working throughout the United States to work at least five
6 (5), ten (10) hour shifts per week or fifty (50) hours per week without receiving overtime wages for
7 all hours worked in excess of forty (40) hours per week.

8 14. At all times relevant hereto, Defendants paid all of their similarly situated "Store
9 Managers" on a basis similar to that which they paid Plaintiff. Specifically, Defendants paid each
10 of their salaried "Store Managers" a weekly or bi-weekly salary irrespective of the number of hours
11 he/she actually worked per week. Similar to the Plaintiff, Defendants similarly situated "Store
12 Managers" were also eligible for commissions.

13 15. At all times relevant hereto, Plaintiff alleges that Defendants had a uniform policy
14 and practice of failing to pay either straight time wages or overtime wages to all of its salaried
15 "Store Managers" who earned a weekly salary less than \$455 per week in violation of the FLSA
16 and Nevada State Law.

17 16. Defendants' auto part stores are run as a true "chain store operation." For example,
18 all of the Defendants' auto part stores are virtually identical in product, serves and operation. The
19 duties of the salaried "Store Managers" are set forth in uniform company-wide policies and
20 procedures. The performances of the salaried "Store Managers" have been closely monitored by
21 regional supervisors to ensure strict compliance with those policies and procedures.

22 17. The Defendants are in the possession of some records reflecting the actual hours
23 worked and pay rates of Plaintiff and other similarly situated "Store Managers." While Plaintiff is
24 unable to state at this time the exact amount owing to herself and the other similarly situated "Store
25 Managers,"

1 Managers,” Plaintiff proposes to obtain such information by appropriate focused discovery
2 proceedings to be taken promptly in this action, and requests damages be awarded according to
3 proof thus obtained and presented to the Court.

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5 IV.

6 **COLLECTIVE AND CLASS ACTION ALLEGATIONS**

7 18. Plaintiff realleges and incorporates by this reference all of the paragraphs above in
8 this Complaint as though fully set forth herein.

9 19. Plaintiff brings this action on behalf of herself and all other similarly situated “Store
10 Managers” as both a collective action under the FLSA (29 U.S.C. § 216(b)) and a class action
11 under Federal Rule of Civil Procedure Rule 23(b)(3). The FLSA Collective Action Group is
12 defined as follows:

13
14 All persons who, at any time during the three years prior to the filing of this action through
15 judgment, are or were employed by Defendants at one of their auto supply stores
16 throughout the United States, excluding the State of California, as salaried “Store
Managers” who earned a salary of less than \$455 per week. (“FLSA Collective Action
Group.”)

17
18 the Nevada FRCP Rule 23 Class is defined as follows:

19 All persons who, at any time during the three years prior to the filing of this action through
20 judgment, are or were employed by Defendants at one of their auto supply stores located
21 in the State of Nevada as salaried “Store Managers” who earned a salary of less than \$455
per week. (“the Nevada Rule 23 Class.”)

22 20. With regard to the conditional certification mechanism under the FLSA, 29 U.S.C.
23 § 216(b), Plaintiff is similarly situated to those that she seeks to represent for the following
24 reasons:

25 A. Defendants employed Plaintiff as a salaried “Store Manager” who was paid
26 a set salary irrespective of the number of hours that she actually worked. Plaintiff, like the other
27 similarly situated “Store Managers” employed by Defendant earning less than \$455 per week in
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1 salary, was suffered and permitted by Defendants to work a significant number of hours per week
2 without receiving straight or overtime wages of one and one half times her regular rate of pay for
3 all hours worked over forty (40) hours in a work week.

4 B. Defendants maintained a uniform policy and practice of misclassifying and
5 failing to pay overtime wages to Plaintiff and all other salaried "Store Managers" earning less than
6 \$455 per week in salary equal to one and one half times their regular rate of pay for all hours
7 worked over forty (40) hours in a work week.

8 C. Common questions exist as to whether Defendants' policy and practice of
9 failing to pay overtime to Plaintiff and all other salaried "Store Managers" earning less than \$455
10 per week violates federal law.

11 D. Upon information and belief, Defendants employ, and have employed, in
12 excess of 500 "Store Managers" earning less than \$455 per week in salary within the applicable
13 statute of limitations period.

14 E. Plaintiff is filing concurrently with this Complaint her consent to sue form
15 with the Court (attached as Exhibit A). Consent to sue forms are not required for state law claims
16 under FRCP Rule 23.

17 21. Class treatment under FRCP Rule 23 is appropriate for the Nevada Rule 23 Class
18 for the following reasons:

19 A. The Class Is Sufficiently Numerous: Upon information and belief,
20 Defendants employ, and have employed, in excess of sixty (60) Class Members within the
21 applicable statute of limitations.

22 B. Plaintiff's Claims are Typical of Those of Fellow Class Members: Each
23 Class Member is and was subject to the same company-wide policies, procedures and practices as
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1 Plaintiff—the failure to pay overtime for all hours worked in excess of forty (40) hours per week to
2 “Store Managers” earning a weekly salary of less than \$455 per week.

3 C. Common Questions of Law and Fact Predominate: Common questions of
4 law and fact exist and predominate as to the Plaintiff and the Class, including, without limitation:
5 whether Defendants’ policy and practice of failing to pay overtime for all hours worked in excess
6 of forty (40) hours per week to “Store Managers” earning a weekly salary of less than \$455 per
7 week violates Nevada Law; the proper method of computing back overtime wages to Plaintiff and
8 the Class; whether formerly employed Class Members, like the Plaintiff, are entitled to an
9 additional thirty (30) days’ worth of wages for Defendants’ failure to properly pay them for all
10 hours worked.
11

12 D. Plaintiff is an Adequate Representative of the Class: Plaintiff will fairly and
13 adequately represent the interest of the Class because Plaintiff is a member of the Class, Plaintiff
14 has issues of fact and law which are common with all members of the Class, Plaintiff does not have
15 any interest that is antagonistic to the other Class Members, and Plaintiff has hired counsel who are
16 very experienced in prosecuting wage and hour class actions such as this case.
17

18 E. A Class Action is Superior: A class action is superior to other available
19 means for the fair and efficient adjudication of this controversy, since individual joinder of all
20 members of the Class is impracticable. Class action treatment will permit a large number of
21 similarly situated persons to prosecute their common claims in a single forum simultaneously,
22 efficiently, and without unnecessary duplication of effort and expense. Furthermore, the expenses
23 and burden of individualized litigation would make it difficult or impossible for individual
24 members of the Class to redress the wrongs done to them, while an important public interest will be
25 served by addressing the matter as a class action. Individualized litigation would also present the
26 potential for inconsistent or contradictory judgments.
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V.

FIRST CAUSE OF ACTION

Failure to Pay Wages in Violation of the FLSA, 29 U.S.C. § 201, *et seq.*

(On Behalf of Plaintiff and all members of the FLSA Collective Action against All Defendants)

22. Plaintiff realleges and incorporates by this reference all the paragraphs above in this Complaint as though fully set forth herein.

23. Pursuant to the FLSA, 29 U.S.C. § 201, *et seq.*, Plaintiff and the FLSA Collective Action Group are entitled to compensation at their regular rate of pay or minimum wage rate, whichever is higher, for all hours actually worked.

24. 29 U.S.C. § 206(a)(1) states that “Every employer shall pay to each of his employees who in any workweek is engaged in commerce or in the production of goods for commerce, or is employed in an enterprise engaged in commerce or in the production of goods for commerce, wages at the following rates: \$7.25 an hour.

25. Once the work day has begun, all time suffered or permitted by the employer to be worked by the employee is compensable at the employee’s regular rate of pay, whether scheduled or not.

26. By failing to compensate Plaintiff and the FLSA Collective Action Group for their hours worked beyond eight hours in a day or forty hours in a week by virtue of misclassifying Plaintiff and the Class Members as salaried employees, Defendants failed to pay Plaintiff and the Class Members for all hours worked.

27. Defendants’ unlawful conduct has been widespread, repeated, and willful. Defendants knew or should have known that its policies and practices have been unlawful and unfair.

SECOND CAUSE OF ACTION

(On Behalf of Plaintiff and all members of the FLSA Collective Action Against All Defendants)

30. The FLSA regulates, among other things, the payment of overtime pay by employers whose employees are engaged in commerce, or engaged in the production of goods for commerce or in the production of goods for commerce. 29 U.S.C. § 207(a)(1).

11

1 32. Exemptions for the requirement to pay overtime to employees are found at §§ 207
2 and 213 of the Fair Labor Standards Act. For example, 29 U.S.C. § 213 (a)(1) states that § 207
3 does not apply if the employee is employed in a bona fide executive, administrative, or
4 professional capacity, or in the capacity of outside salesman. In view of the remedial purpose of
5 the FLSA, it is well settled that the various statutory exemptions are to be narrowly construed and
6 that the burden is always on the employer to prove that its employees fall squarely within the scope
7 of a particular exemption. In this case, neither Plaintiff nor the similarly situated individuals in the
8 FLSA Collective Action Group qualify for any of the exemptions which would permit Defendants
9 from failing to pay them overtime for all hours worked in excess of forty (40) hours per week.
10

11 33. Section 16(b) of the Fair Labor Standards Act [29 U.S.C. § 216(b)] states: "Any
12 employer who violates the provisions of § 6 or § 7 of this Act shall be liable to the employee or
13 employees affected in the amount of their unpaid minimum wages, or their unpaid overtime
14 compensation, as the case may be, and in an additional equal amount as liquidated damages. The
15 court in such action shall, in addition to any judgment awarded to the plaintiff or plaintiffs, allow a
16 reasonable attorney's fee to be paid by the defendant, and the costs of the action."
17

18 34. Section 17 of the Fair Labor Standards Act [29 U.S.C. § 217] states: "The district
19 courts . . . shall have jurisdiction, for cause shown, to restrain violations of § 215 of this title,
20 including in the case of § 215(a)(2) of this title the restraint of any withholding of payment of
21 minimum wages or overtime compensation found by the court to be due to employees under this
22 chapter"
23

24 35. The statute of limitations for violations of the FLSA is three years if the violations
25 are willful. At all times relevant hereto, Defendants have willfully and improperly treated Plaintiff
26 and other similarly situated individuals in the the FLSA Collective Action Group as "salaried"
27 employees exempt from the overtime protections of the Fair Labor Standards Act. Defendants'
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1 unlawful conduct has been widespread, repeated and willful. Defendants have willfully violated
2 the Fair Labor Standards Act by wrongfully "Store Managers," including Plaintiff, as "exempt" to
3 avoid payment of overtime wages and other benefits.

4 36. Defendants' unlawful conduct has been widespread, repeated and willful. Plaintiff is
5 informed and believes, and thereon alleges, that Defendants knew or should have known that
6 Plaintiff and the Class Members did not qualify as exempt employees and purposely elected not to
7 pay them for their overtime labor.
8

9 37. Therefore, Plaintiff seeks unpaid overtime at time and one half of her regular rate,
10 liquidated damages in an equal amount, plus attorney's fees and costs for herself and all Class
11 Members, in addition to injunctive relief, from three years preceding the filing of this lawsuit until
12 the date of judgment after trial, plus interest and costs as allowed by law.
13

14 VII.

15 THIRD CAUSE OF ACTION

16 Failure to Pay Wages for All Hours Worked in Violation of NRS 608.140 and 608.016

17 (On Behalf of Plaintiff and all members of the Nevada Rule 23 Class Against All Defendants)

18 38. Plaintiff realleges and incorporates by this reference all the paragraphs above in this
19 Complaint as though fully set forth herein.

20 39. NRS 608.140 provides that an employee has a private right of action for unpaid
21 wages.
22

23 40. NRS 608.016 states that "An employer shall pay to the employee wages for each
24 hour the employee works." Hours worked means anytime the employer exercises "control or
25 custody" over an employee. See NRS 608.011 (defining an "employer" as "every person having
26 control or custody . . . of any employee."). Pursuant to the Nevada Administrative Code, hours
27 worked includes "all time worked by the employee at the direction of the employer, including time
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1 worked by the employee that is outside the scheduled hours of work of the employee.” NAC
2 §608.115(1).

3 41. By failing to compensate Plaintiff and members of the Nevada Rule 23 Class for the
4 time spent working in excess of forty (40) hours per week and misclassifying Plaintiff and the
5 Class Members as salaried exempt employees, Defendants failed to pay Plaintiff and members of
6 the Nevada Rule 23 Class for all hours worked in violation of NRS 608.140 and 608.016.
7

8 42. Although the statute of limitations for minimum wage violations is two years, there
9 is no express statute of limitations for violations of NRS 608.140 and 608.016 and, therefore, the
10 three-year statute contained in NRS 11.190(3) for statutory violations applies.

11 43. Wherefore, Plaintiff demands for herself and for all members of the Nevada Rule 23
12 Class payment by Defendants at the regular hourly rate of pay for all hours worked during the
13 during the relevant time period alleged herein together with attorneys’ fees, costs, and interest as
14 provided by law.
15

16 VIII.

17 FOURTH CAUSE OF ACTION

18 Failure to Pay Overtime Wages in Violation of NRS 608.140 and 608.018

19 (On Behalf of Plaintiff and all members of the Nevada Rule 23 Class Against All Defendants)

20 44. Plaintiff realleges and incorporates by this reference all the paragraphs above in this
21 Complaint as though fully set forth herein.
22

23 45. NRS 608.140 provides that an employee has a private right of action for unpaid
24 wages.

25 46. NRS 608.018(1) provides as follows:

26 An employer shall pay 1 1/2 times an employee’s regular wage rate
27 whenever an employee who receives compensation for employment at a
28 rate less than 1 1/2 times the minimum rate prescribed pursuant to NRS
608.250 works: (a) More than 40 hours in any scheduled week of work;

1 or (b) More than 8 hours in any workday unless by mutual agreement the
2 employee works a scheduled 10 hours per day for 4 calendar days within
3 any scheduled week of work.

4 47. NRS 608.018(2) provides as follows:

5 An employer shall pay 1 1/2 times an employee's regular wage rate
6 whenever an employee who receives compensation for employment at a
7 rate not less than 1 1/2 times the minimum rate prescribed pursuant to
8 NRS 608.250 works more than 40 hours in any scheduled week of work.

9 48. NRS 608.018 and 608.250 contain various exemptions whereby employers can
10 avoid paying overtime to certain types of employees. However, Plaintiff and members of the
11 Nevada Rule 23 Class do not qualify for any of the exemptions contained in these sections. By
12 misclassifying Plaintiff and all members of the Nevada Rule 23 Class as salaried exempt
13 employees and failing to pay Plaintiffs and the Class Members for all hours worked in excess of
14 forty (40) hours per week, Defendants failed to pay Plaintiffs and Class Members daily overtime
15 premium pay for all hours worked over eight (8) hours in a workday to those class members who
16 were paid a regular rate of less than one and one half times the minimum wage premium pay and,
17 failed to pay a weekly premium overtime rate of time and one half their regular rate for all
18 members of the Class who worked in excess of forty (40) hours in a week in violation of NRS
19 608.140 and 608.018.

20
21 49. Although the statute of limitations for minimum wage violations is two years, there
22 is no express statute of limitations for violations for failure to pay overtime rates of pay pursuant to
23 NRS 608.140 and 608.018 and, therefore, the three-year statute contained in NRS 11.190(3) for
24 statutory violations applies.

25
26 50. Wherefore, Plaintiff demands for herself and for all members of the Nevada Rule 23
27 Class that Defendants pay Plaintiff and Class Members one and one half times their "regular rate"
28 of pay for all hours worked in excess of eight (8) hours in a workday and in excess of forty (40)

1 hours a workweek during the relevant time period alleged herein together with attorneys' fees,
2 costs, and interest as provided by law.

3
4 **IX.**

5 **FIFTH CAUSE OF ACTION**

6 Failure to Timely Pay All Wages Due and Owing Upon Termination Pursuant to NRS 608.140
7 and 608.020-.050

8 (On Behalf of Plaintiff and all members of the Nevada Rule 23 Class Against All Defendants)

9 51. Plaintiff realleges and incorporates by this reference all the paragraphs above in this
10 Complaint as though fully set forth herein.

11 52. NRS 608.140 provides that an employee has a private right of action for unpaid
12 wages.

13 53. NRS 608.020 provides that "[w]henver an employer discharges an employee, the
14 wages and compensation earned and unpaid at the time of such discharge shall become due and
15 payable immediately."

16 54. NRS 608.040(1)(a-b), in relevant part, imposes a penalty on an employer who fails
17 to pay a discharged or quitting employee: "Within 3 days after the wages or compensation of a
18 discharged employee becomes due; or on the day the wages or compensation is due to an employee
19 who resigns or quits, the wages or compensation of the employee continues at the same rate from
20 the day the employee resigned, quit, or was discharged until paid for 30-days, whichever is less."

21 55. NRS 608.050 grants an "employee lien" to each discharged or laid-off employee for
22 the purpose of collecting the wages or compensation owed to them "in the sum agreed upon in the
23 contract of employment for each day the employer is in default, until the employee is paid in full,
24 without rendering any service therefore; but the employee shall cease to draw such wages or salary
25 30 days after such default."
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X.

Wherefore Plaintiff, on her own behalf and on behalf of all similarly situated “Store Managers,” as defined above, prays for relief as follows relating to her collective and class action allegations:

1. For an order conditionally certifying this action under the FLSA and providing notice to all members of the FLSA Collective Action Group so they may participate in this lawsuit;
2. For an order certifying this action as a traditional class action under Federal Rule of Civil Procedure Rule 23 on behalf of the Nevada Rule 23 Class;
3. For an order appointing Plaintiff as the Representative of the Nevada Rule 23 Class and her counsel as Class Counsel;
4. For damages according to proof for straight and overtime wages at the applicable rate under federal law for all hours worked over forty (40) per week;
5. For liquidated damages pursuant to 29 U.S. C. § 216(b);

6. For damages according to proof for regular rate pay under NRS 608.140 and 608.016 for all hours worked;
7. For damages according to proof for overtime compensation at the applicable rate under NRS 608.140 and 608.018 for all hours worked for those members of the Nevada Rule 23 Class who earned a regular rate of less than one and one half times the minimum wage for hours worked in excess of eight (8) hours per day and/or for all members for overtime premium pay of one and one half their regular rate for all hours worked in excess of forty (40) hours per week;
8. For sixty days of waiting time penalties pursuant to NRS 608.140 and 608.040-.050;
9. For interest as provided by law at the maximum legal rate;
10. For reasonable attorneys' fees authorized by statute;
11. For costs of suit incurred herein;
12. For pre-judgment and post-judgment interest, as provided by law, and
13. For such other and further relief as the Court may deem just and proper.

Dated June 5, 2014

JONES LAW FIRM

By: /s/ Charles A. Jones
Attorneys for Plaintiff and
all others similarly situated

Exhibit A

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10 UNITED STATES DISTRICT COURT
11 FOR THE DISTRICT OF NEVADA

12
13 ANGELICA MIRANDA, on behalf of herself
14 and all others similarly situated,

15 Plaintiff,

16 v.

17 O'REILLY AUTOMOTIVE STORES, INC.,
18 D/B/A O'REILLY AUTO ENTERPRISES,
19 LLC, and CSK AUTO, INC, a foreign
20 corporation; and O'REILLY AUTO
21 ENTERPRISES, LLC, a foreign limited
22 liability company; and CSK AUTO, INC, a
23 foreign corporation

24 Defendants.

Case No.

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1 **CONSENT TO OPT-IN TO COLLECTIVE ACTION**
2 **UNDER THE FAIR LABOR STANDARDS ACT**

3 Pursuant to Section 16(b) of the Fair Labor Standards Act [29 U.S.C. §216(b)], I hereby
4 consent to be a party plaintiff in a collective action brought in the United States District Court,
District of Nevada, titled Angelica Miranda, et al. v. O'Reilly Automotive Stores, Inc., et al., to
recover unpaid overtime and other sums owing to me and other similarly situated employees.

5
6 DATED: June 5th, 2014

7 Angelica Miranda
8 SIGNED

9 ANGELICA MIRANDA
10 PRINTED NAME